



2024:DHC:3608



\$~31 to 33

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 03.05.2024

+ **CRL.M.C. 5024/2022 & CRL.M.A. 20098/2022**
+ **CRL.M.C. 7148/2022 & CRL.M.A. 27587/2022**
+ **CRL.M.C. 7149/2022 & CRL.M.A. 27589/2022, CRL.M.A. 27590/2022**

RAGHAVENDRA KRISHNAMURTHY YA LA KODU

..... Petitioner

Through: **Ms.Krishna Parkhani, Adv.**

versus

**STATE OF NCT OF DELHI THROUGH ITS CHIEF
SECRETARY & ANR.**

..... Respondents

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: **Ms.Meenakshi Dahiya, APP
with SI Naveen Tejan
Mr.S.K. Sharma, Adv. for R-2**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 08.01.2021 in Criminal Complaint being CC NI Act No.61/2020 (in CRL.M.C. 5024/2022); Order dated 31.01.2022 and 04.06.2022 in Criminal Complaint, being CC NI Act No.944/2021 (in CRL.M.C. 7148/2022); and Order dated 23.07.2022 in Criminal Complaint, being CC NI Act No.3088/2021 (in CRL.M.C.



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7149/2022), all titled ***KRW Leasing LLP v. Garage Cowork Pvt. Ltd. & Ors.*** (hereinafter collectively referred to as the ‘Complaint Cases’ and as ‘Impugned Orders’) passed by the learned Metropolitan Magistrate (NI Act) Digital Court, East District, Karkardooma Courts, Delhi (hereinafter referred to as the ‘Trial Court’), summoning, *inter alia*, the petitioner herein in the Complaint Cases filed by the respondent no. 2 under Section 138 of the Negotiable Instruments Act, 1881 (in short, ‘NI Act’).

Factual Matrix:

2. The above Complaint Cases have been filed by the respondent no.2 herein alleging that:

- 2.1 It is in the business of equipment leasing, leasing of immovable and movable properties of all kinds and description, and right, title and interest therein etc.;
- 2.2 Accused no.1, that is, Garage Cowork Pvt. Ltd. is a Company incorporated under the Companies Act, 2013 (hereinafter referred to as ‘Companies Act’). The other accused persons, including the petitioner herein, are its Directors and are in charge of day-to-day affairs of the accused no.1 Company;
- 2.3 Respondent no.2 herein is the owner of the property bearing no.270, Phase-2, Udyog Nagar, Gurugram, Haryana (hereinafter referred to as the ‘Subject Property’);
- 2.4 Respondent no.2 herein leased out the entire subject property to the Accused no. 1 for a period of 14 years and



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4 months in consideration of monthly rent. The lease commenced on 01.04.2020 and was to end on 31.07.2034 and the lease deed was duly registered;

2.5 Accused no.1, through one of its directors, asked for some more time to pay monthly rent, which was considered by the respondent no.2 keeping in view the outbreak of the Covid-19 pandemic;

2.6 The respondent no.2 herein made numerous requests to the accused to pay the arrears of rent, however, to no avail;

2.7 Accused no.1, through its directors, issued cheques in the months of September, October, and December 2020 for the due and payable monthly rent. The said cheques got dishonoured on their presentation with the remarks "Funds Insufficient" or "Stop Payment". Whereafter, the respondent no.2 herein, through its counsel, sent demand notices dated 26.10.2020, 25.11.2020, and 07.04.2021. The said notices were duly served upon the accused, however, the dues were not paid.

3. By the Impugned Orders, the learned Trial Court has been pleased to issue summons *inter alia* to the petitioner in the above Complaint Cases.

4. Aggrieved of the said Orders, the petitioner has filed the present petitions.

Submissions of the Learned Counsel for the Petitioner:

5. The learned counsel for the petitioner submits that the petitioner



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was involved in the affairs of the accused no.1 Company in the complaint cases, that is, Garage Cowork Pvt. Ltd., only as a resident Indian Director and that too, for a short period and only for the purposes of incorporation of the said Company in India. She submits that the petitioner had resigned from the Company on 31.12.2020. She submits that the petitioner was not aware of the day-to-day functioning/affairs of the said Company, as its operations were conducted from Gurugram, Haryana, while the petitioner is a resident of Bengaluru, Karnataka. She submits that, in fact, he did not receive any remuneration from the accused no.1 Company during his stint as a Director from the said Company.

6. She further submits that the above complaint is arising out of the relationship of a lessor and a lessee between the accused no.1 Company and the respondent no.2 created by a Lease Deed dated 12.06.2020. She submits that the said Lease Deed was not executed by the petitioner herein, but by the authorized representative of the accused no.1 Company, on directions of Mr.Prashant Garg, who is also arrayed as an accused in the Complaint Cases. She submits that the cheque has not been signed by the petitioner, but by Mr.Prashant Garg.

7. She further submits that the demand notice(s) was not delivered upon the petitioner.

8. She further submits that the respondent no.2 has initiated other litigations as well against the accused no.1 Company, including complaints to the Registrar of Companies, wherein it has not made any allegation against the petitioner herein.



9. Placing reliance on the judgments of the Supreme Court in *Ashok Shewakramani & Ors. v. State of Andhra Pradesh & Anr.*, (2023) 8 SCC 473; *A.C. Narayanan v. State of Maharashtra & Anr.*, (2014) 11 SCC 790; *Siby Thomas v. M/s. Somany Ceramics Ltd.*, (2024) 1 SCC 348; *National Small Industries Corporation Limited v. Harmeet Singh Paintal & Anr.*, (2010) 3 SCC 330; *Gunmala Sales (P) Ltd. v. Anu Mehta & Ors.*, (2015) 1 SCC 103; and, *Susela Padmavathy Amma v. M/s Bharti Airtel Limited* 2024 SCC OnLine SC 311, she submits that merely because the petitioner at one point of time was the Director of the main accused Company, he cannot be made an accused and be summoned in a complaint filed under Section 138 of the NI Act.

10. She further submits that in one of the complaints filed by the respondent no.2, being CT Case No.3085/2020, the learned Trial Court did not issue summons to the petitioner.

11. She submits that, therefore, the Impugned Order is contrary to law and liable to be set aside.

Submissions of the Learned Counsel for the Respondent no.2:

12. On the other hand, the learned counsel for the respondent no.2 submits that the petitioner was an Executive Director of the accused no.1 Company. He was also the Promoter of the said Company. Placing reliance on the judgment of the Supreme Court in *S.P. Mani & Mohan Dairy v. Dr.Snehalatha Elangovan*, (2023) 10 SCC 685; and of this Court in *Sashi Kumar Nagaraji & Ors. v. M/s Magnifico Minerals Pvt Ltd & Ors.*, Neutral Citation No.2023:DHC:4318, he



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submits that the position of an Executive Director is different, as he is a ‘*Key Managerial Person*’ of the Company as defined in Section 2(51) of the Companies Act. He further submits that for an Executive Director, the law presumes that he is in-charge of and responsible for the day-to-day affairs of the Company. He submits that, in fact, even in *Susela Padmavathy Amma* (Supra), the Supreme Court has highlighted the above distinction.

Analysis & Findings:

13. I have considered the submissions made by the learned counsels for the parties.

14. At the outset, it is to be kept in mind that at the time of issuing process, the learned Trial Court is only concerned with the allegations made in the complaint and the evidence led in support of the same. The learned Trial Court is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. The learned Trial Court is not even required to record the reasons in detail while issuing the process. At this stage, it is not the province of the learned Trial Court to enter into a detailed discussion/analysis on the merits or demerits of the case. Reference in this regard is made to the judgments of the Supreme Court in *UP Pollution Control Board v. Mohan Meakins Ltd. & Ors.* (2000) 3 SCC 745 and *Bhushan Kumar & Another v. State (NCT of Delhi) & Another* (2012) 5 SCC 424.

15. The ‘*Simplified Proforma for Incorporating Company Electronically*’ (SPICE) form for the accused no.1 Company, filed by the respondent no.2 with its reply to the present petition, clearly shows



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the position of the petitioner to be an Executive Director and Promoter of the accused no.1 Company.

16. Rule 2(k) of the Companies (Specification of definitions details) Rules, 2014 defines an '*Executive Director*' to mean a whole-time director as defined in clause (94) of Section 2 of the Companies Act.

17. Section 2(94) of the Companies Act defines the '*Whole-time Director*' to include a director in the whole-time employment of the company.

18. Section 2(51) defines the '*Key Managerial Personnel*', in relation to a company, to *inter alia* mean the whole-time director.

19. Reading of the above provisions would show that an Executive Director is a '*Key Managerial Personnel*', who, even in terms of Section 2(60) of the Companies Act, shall be an '*officer who is in default*'.

20. Section 2(69) of the Companies Act, defines '*Promoter*' to mean a person who, *inter alia*, has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise or in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, provided such person is not acting merely in a professional capacity.

21. As noted hereinabove, the petitioner is/was the Executive Director and Promoter of the accused no. 1 company. In law, therefore, there is a presumption that he is not only a '*Key Managerial Personnel*', but also has control over the affairs of the company.

22. Section 141 of the NI Act reads as under:



“141. Offences by companies.—(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section, —

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.”

(Emphasis Supplied)



23. In *K.K. Ahuja v. V.K. Vora & Anr.*, (2009) 10 SCC 48, the Supreme Court highlighted the difference between the position of a Managing Director of the Company vis-à-vis an ordinary Director, as far as Section 141 of the NI Act is concerned, and held that if the accused is the Managing Director of a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company; Law presumes that the Managing Director is in charge of and is responsible to the company for the conduct of its business. It was held as under:

“20. Section 291 of the Companies Act, 1956 provides that subject to the provisions of that Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. A company though a legal entity can act only through its Board of Directors. The settled position is that a Managing Director is prima facie in charge of and responsible for the company's business and affairs and can be prosecuted for offences by the company. But insofar as other Directors are concerned, they can be prosecuted only if they were in charge of and responsible for the conduct of the company's business.

21. A combined reading of Sections 5 and 291 of the Companies Act, 1956 with the definitions in clauses (24), (26), (30), (31), (45) of Section 2 of that Act would show that the following persons are considered to be the persons who are responsible to the company for the conduct of the business of the company:

- (a) the Managing Director(s);*
- (b) the whole-time Director(s);*
- (c) the manager;*
- (d) the secretary;*



(e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;

(f) any person charged by the Board with the responsibility of complying with that provision (and who has given his consent in that behalf to the Board); and

(g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors.

It follows that other employees of the company, cannot be said to be persons who are responsible to the company, for the conduct of the business of the company.

22. Section 141 uses the words “was in charge of, and was responsible to the company for the conduct of the business of the company”. (emphasis supplied) It is evident that a person who can be made vicariously liable under sub-section (1) of Section 141 is a person who is responsible to the company for the conduct of the business of the company and in addition is also in charge of the business of the company. There may be many Directors and secretaries who are not in charge of the business of the company at all. The meaning of the words “person in charge of the business of the company” was considered by this Court in *Girdhari Lal Gupta v. D.H. Mehta* (1971) 3 SCC 189 followed in *State of Karnataka v. Pratap Chand* (1981) 2 SCC 335 and *Katta Sujatha v. Fertilizers & Chemicals Travancore Ltd.* (2002) 7 SCC 655 This Court held that the words refer to a person who is in overall control of the day-to-day business of the company. This Court pointed out that a person may be a Director and thus belongs to the group of persons making the policy followed by the company, but yet may not be in charge of the business of the company; that a person



may be a manager who is in charge of the business but may not be in overall charge of the business; and that a person may be an officer who may be in charge of only some part of the business.

27. The position under Section 141 of the Act can be summarised thus:

(i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, secretary or manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section



141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

24. In ***National Small Industries Corporation Limited*** (Supra), the Supreme Court reiterated that if the accused is a Managing Director or Joint Managing Director, then it is not necessary to make specific averments in the complaint and by virtue of their position, they are liable to be proceeded with.

25. The above position in law has been reiterated by the Supreme Court in ***Sunita Palita v. Panchami Stone Quarry***, (2022) 10 SCC 152; ***S.P. Mani & Mohan Dairy*** (Supra); and, in ***Susela Padmavathy Amma*** (Supra).

26. It is for the above reason that in ***Ashok Shewakramani*** (Supra) and in ***Susela Padmavathy Amma*** (Supra), the Supreme Court emphasized that in those cases, it was not dealing with the cases of a Managing Director or a Whole-Time Director. The role of a Joint Managing Director of a Company may be different from an ordinary Director.

27. In ***Sai Girdhar Raj Kumar v. Arun Kapoor & Ors.***, 2020:DHC:1859, a Co-ordinate Bench of this Court, held that where



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the petitioner/accused is an Executive Director in the category of Promoter, and the complaint carries an averment that the petitioner along with others was looking after the day-to-day affairs of the company, being in-charge thereof was jointly and severally liable for the offence under Section 138 of the NI Act.

28. In ***Siby Thomas*** (supra), the Supreme Court was not dealing with a case where the accused was the Managing Director or the Whole-Time Director. The said judgment, therefore, cannot come to the aid of the petitioner.

29. As far as the submission of the learned counsel for the petitioner that the petitioner, being in Bengaluru, Karnataka, while the property and the company being in Delhi, he was not in control of the affairs of the company, the same will be a matter of trial and cannot be adjudicated upon in these proceedings by this Court.

30. Similarly, the submission of the petitioner that the petitioner has since resigned, also cannot make the petitioner escape his liability under Section 138 read with Section 141 of the NI Act, at this Stage. In ***S.P. Mani & Mohan Diary*** (supra), the Supreme Court has held that different persons can be in-charge of the company when each of the series of acts of commission and omission essential to complete the commission of offence by the company were being committed. Therefore, *“every person who was in charge of and was responsible to the company for the conduct of its business at the time any of the components necessary for the commission of the offence occurred may be “proceeded against”, but may not be “punished” if he succeeds in proving that the offence was committed without his knowledge and*



despite his due diligence; the burden of proving that remaining on him.”. I may quote from the judgment as under:-

*“34. The seminal issue raised and required to be settled in the present case is one relating to a person liable to be proceeded against under the provisions of sub-section (1) of Section 141 for being in-charge of and responsible to the company “at the time the offence was committed.” It would, therefore, be important to find out the “time” when the offence under Section 138 can be said to have been committed by the company. It is commonplace that an offence means an aggregate of facts or omissions which are punishable by law and, therefore, can consist of several parts, each part being committed at different time and place involving different persons. The provisions of Section 138 would require a series of acts of commission and omission to happen before the offence of, what may be loosely called “dishonour of cheque” can be constituted for the purpose of prosecution and punishment. It is held by the Supreme Court in *K. Bhaskaran v. Sankaran Vaidhyan Balan*, that :*

“14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. The following are the acts which are components of the said offence : (1) drawing of the cheque, (2) presentation of the cheque to the bank, (3) returning the cheque unpaid by the drawee bank, (4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.”

35. Different persons can be in-charge of the company when each of the series of acts of commission and omission essential to complete the commission of offence by the



company were being committed. To take an example, in the case of a company, “A” might be in charge of the company at the time of drawing the cheque, “B” might be in charge of the company at the time of dishonour of cheque and “C” might be in charge of the company at the time of failure to pay within 15 days of the receipt of the demand notice. In such a case, the permissibility of prosecution of A, B and C, respectively, or any of them would advance the purpose of the provision and, if none can be prosecuted or punished, it would frustrate the purpose of the provisions of Section 138 as well as Section 141.

36. *The key to this interpretation lies in the use of the phrase: “every person shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly” as it occurs in sub-section (1) of Section 141 and the use of the phrase “provided that nothing contained in this sub-section shall render any person liable to punishment if he proves...” that occurs in the first proviso. Every person who was in charge of and was responsible to the company for the conduct of its business at the time any of the components necessary for the commission of the offence occurred may be “proceeded against”, but may not be “punished” if he succeeds in proving that the offence was committed without his knowledge and despite his due diligence; the burden of proving that remaining on him.*

37. *Therefore, it also has to be held that the time of commission of the offence of dishonour of cheque cannot be on the stroke of a clock or during 15 days after the demand notice has to be construed as the time when each of the acts of commission and omission essential to constitute the offence was committed. The word “every” points to the possibility of plurality of responsible persons at the same point of time as also to the possibility of a series of persons being in charge when the*



sequence of events culminating into the commission of offence by the company were taking place.”

31. The learned counsel for the petitioner has submitted that Mr. Prashant Garg was the director in-charge for the dealings with the respondent no. 2. He submits that Mr. Garg is the signatory of the cheque and the lease deed was signed by the person under his authority. This submission cannot lead to the quashing of the complaint cases at this stage. Only because Mr. Prashant Garg can be made liable for the offence committed by the accused no. 1 company, need not lead to the inference that the petitioner is not so liable. What was his role in the transaction, would require appreciation of evidence and the complaint cannot be quashed by this Court at this stage.

32. In ***S.M.S Pharmaceuticals*** (Supra), the Supreme Court, while taking note of the earlier judgment in ***MCD v. Ram Kishan Rohtagi & Ors.***, (1983) 1 SCC 1, has observed that order of the Magistrate issuing process can only be set aside/quashed in a case where the allegation made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients. It was further reiterated the managing directors or the joint managing directors, by virtue of the office they hold are in-charge of and responsible for the conduct of the business of the company and can be made vicariously liable under Section 141 of the NI Act.

33. In ***Gunmala Sales*** (Supra), the Supreme Court has cautioned



that the High Court must use the power under Section 482 of the Cr.P.C. for quashing of the complaint cases under Section 138 of the NI Act sparingly and with great circumspection and shall not conduct a mini-trial or roving inquiry at this stage. It was held as under:

“34. We may summarise our conclusions as follows:

34.1. Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time when the offence was committed, the Magistrate can issue process against such Director.

34.2. If a petition is filed under Section 482 of the Code for quashing of such a complaint by the Director, the High Court may, in the facts of a particular case, on an overall reading of the complaint, refuse to quash the complaint because the complaint contains the basic averment which is sufficient to make out a case against the Director.

34.3. In the facts of a given case, on an overall reading of the complaint, the High Court may, despite the presence of the basic averment, quash the complaint because of the absence of more particulars about the role of the Director in the complaint. It may do so having come across some unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or totally acceptable circumstances which may clearly indicate that the Director could not have been concerned with the issuance of cheques and asking him to stand the trial would be abuse of process of court. Despite the presence of basic averment, it may come to a conclusion that no case is made out against the Director. Take for instance a case of a Director suffering from a terminal illness who was bedridden at the relevant time or a Director who had resigned long before issuance of cheques. In such cases, if the High



Court is convinced that prosecuting such a Director is merely an arm-twisting tactics, the High Court may quash the proceedings. It bears repetition to state that to establish such case unimpeachable, incontrovertible evidence which is beyond suspicion or doubt or some totally acceptable circumstances will have to be brought to the notice of the High Court. Such cases may be few and far between but the possibility of such a case being there cannot be ruled out. In the absence of such evidence or circumstances, complaint cannot be quashed.

34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

34. In ***S.P. Mani*** (Supra), the Supreme Court has held as under:

"50. The principles discernible from the aforesaid decision of this Court in Ashutosh Ashok Parasrampuriya are that the High Court should not interfere under Section 482 of the Code at the instance of an accused unless it comes across some unimpeachable and incontrovertible evidence to indicate that the Director/partner of a firm could not have been concerned with the issuance of cheques. This Court clarified that in a given case despite the presence of basic averments, the High Court may conclude that no case is made out against the particular Director/partner



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provided the Director/partner is able to adduce some unimpeachable and incontrovertible evidence beyond suspicion and doubt.”

Conclusion:

35. In view of the above, I find no merit in the present petitions. The same are dismissed, leaving all submissions of either of the parties open to be determined by the learned Trial Court remaining uninfluenced by the observations made by this Court.

36. The pending applications also stand disposed of being rendered infructuous.

NAVIN CHAWLA, J

MAY 3, 2024/ns/AS

Click here to check corrigendum, if any